making sure that, from the public's point of view, there is more accountability.

I also rise to request that my House colleagues tomorrow, in the voice vote and the recorded vote on legal services for the poor, that we again do as we have in the past 2 years, restore the $109 million in this House so those who are truly in need and need legal representation in their local counties and across their States for cases involving 101 assistance for the poor, that they support the amendment tomorrow, the Mollohan-Fox-Ramstad amendment, because it is so important to many of those who could not be represented otherwise, and who may be just one court case away from losing their family, losing their job, or losing an important matter which goes to their financial or family security.

I thank those who will look carefully upon our debate tonight and hopefully support our amendment.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Washington (Mrs. LINDA SMITH) is recognized for 5 minutes.

Mrs. LINDA SMITH of Washington addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.

THE DIFFERENCES BETWEEN THE DEMOCRATS' PATIENTS' BILL OF RIGHTS AND THE REPUBLICAN HMO PROPOSAL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, this evening I would like to spend some time talking about the issue of managed care reform, or HMO reform. I wanted to start out by pointing out that the House Republican leaders brought a bill to the floor about 2 weeks ago which they are trying to use to essentially dupe Americans into believing that they are protected against HMOs, when in fact, if anything, the Republican bill makes people's situation with HMOs even worse off, in my opinion.

There were no hearings on this Republican bill. It never went through any congressional committee, and it was literally changing up until the very last minute, when it came to the floor of the House of Representatives.

For months Republicans have been working hand-in-hand with insurance companies to fight the Democratic alternative, the Patients' Bill of Rights, which is a real patient protection bill, which enjoys the strong support of doctors, nurses, and consumer advocates.

Now all of a sudden the Republicans have rushed their bill, which they call a patient protection bill, to the floor in an effort to solve the political problem that their opposition to managed care reform has essentially become. Mr. Speaker, make no mistake, the differences between the Democratic Patients' Bill of Rights and the Republican HMO proposal are significant.

The Republican bill excludes key provisions that are essential for consumer protection, and includes provisions that would reduce current consumer protections. The Republican HMO plan seeks to give the appearance of reform without the reality.

Just to mention, among other things, some of the most serious problems with the Republican HMO plan, it leaves medical decisions in the hands of insurance company accountants instead of doctors. It does not limit HMOs and insurance companies' use of improper financial incentives to limit needed care. It allows drive-through mastectomies, and fails to contain a requirement of coverage for reconstructive surgery after mastectomies.

It does not give access to specialty care when needed. It also does not guarantee patients access to needed drugs or clinical trials. Most important, it provides no effective mechanism to hold plans accountable when plans abuse, kill, or injure someone.

Democrats have been insisting and will continue to insist on a bill that contains guarantees that are a significant gain for health plan consumers. The Republican plan, by contrast to the Democratic plan, is essentially a sham in providing patient protections.

Mr. Speaker, I wanted to talk for a few minutes, if I could, about some of the specific problems that I see with the Republican HMO plan, and give some examples of how they essentially would not help.

For example, one of the most important provisions in the Republican bill that contrasts it from the Democratic Patients' Bill of Rights is that the Democrats' Patients' Bill of Rights insures access to specialists, whereas the Republican plan does not.

For example, under the Democratic bill, if you had cancer, you could go directly to an oncologist. If your child had a specific problem, you could bring your child to whatever type of specialist your child might need. Under the Republican plan, you would still have to go see your primary care physician for a referral, and there is no guarantee that you would get to see a specialist if you needed one.

The differences between the two bills are even more pronounced when it comes to seeing specialists outside your HMO, outside your network. The Democrats' Patients' Bill of Rights ensures you will be able to go outside your network at no cost to you if you need to see a specialist that your HMO does not have within the network. But under the Republican bill, if you need to see a specialist outside of your network, you are out of luck. You do not get to see him.

Another difference between the access each bill would provide is what we call ''standing referrals.'' If you were fortunate enough to be in an HMO that has the type of specialists you need when you get sick under the Republican plan, you still have to jump through hoops. The Republican plan does not allow patients who need care over a long period of time by a specialist to have standing referrals. The Democratic bill, the Patients' Bill of Rights, does not require patients to go back time and again to renew referrals. If you need to see a specialist over a long period of time, you are guaranteed the right to that doctor.

The Democrats' Patients' Bill of Rights will also let you designate the specialist as your primary care physician. If you are a woman, you can choose your OB-GYN as your primary care physician. The Republican bill, by contrast, neither allows you to designate your specialist as your primary care physician nor your OB-GYN.

Another major difference, and I think it is important, refers to access to physicians, again. That is, what the two bills do to protect the continuity of care.

The Democrats' bill ensures that if you were in the middle of treatment and your plan drops the doctor that you were seeing or your employer switches insurance companies, that you will still be able to see that doctor at no cost to you. But under the Republican bill, if you are a woman in your last trimester of pregnancy, for example, you could be forced to see another doctor once that doctor is dropped from the plan. The same goes for any patient in similar circumstances.

The differences in ensuring access between the two bills is not limited to just physicians. Under the Democrats' Patients' Bill of Rights, health plans are required to have a process for allowing certain patients to participate in a defined set of approved clinical trials.

For many patients, clinical trials represent the last and only hope they have of surviving. But the Republican plan provides no access to clinical trials at all. If you are in an advanced stage of breast cancer, for example, the Democratic bill would give you not only the opportunity but the resources to fight that horrible disease. I do not see how the Republican bill does anything of the sort.

One last difference I would like to point out in terms of access is access to needed drugs. The Republican plan does not guarantee that your HMO will pay for the drugs your doctor prescribes. If your doctor prescribes you a drug that is not on your HMO's approved list of drugs under the Republican plan, you will have to pay for it yourself. If it is too expensive for you, that is too bad. Even though you have health care, you find the prescribed remedy out of reach because the health plan you pay for refuses to cover it.

The Democrats' Patients' Bill of Rights, on the other hand, guarantees access to whatever medication your

doctor determines that you need. The Democrats' bill requires plans that have a limited set of drugs available to provide patients with access to drugs that are medically necessary.

As I said, Mr. Speaker, really, the facts tell the story. When we compare these two bills, we find there is no comparison at all. Basically, the Republican bill does little to expand access and a lot to protect the insurance industry. Really, I think we should be helping patients get the care they need without the red tape and without the added trauma of wondering just how much sicker they are going to get, and have to wait for some bureaucrat somewhere to tell them they can see a doctor or have the medicine they need. If we want to address those problems, then we have to pass the Democrats' Patients' Bill of Rights.

I wanted to mention another area that I consider a very important difference between the two bills. Then I will try to wrap up what I have to say tonight. That is, in my opinion, one of the most important aspects. That is the issue of enforcement.

The point is clear that under the Democratic proposal, the Patients' Bill of Rights, we are getting certain patient protections. Under the Republican bill, we are getting very few patient protections. Even if there were some patient protections that were important under the Republican bill, it does not mean anything if we cannot enforce those patient protections and make sure we get them. Any legislation that fails to give patients the right of enforcement essentially renders the protections within the bill absolutely meaningless.

The Democratic bill, most importantly, repeals the ERISA exemption. This is the 1974 law that shields HMOs from being sued if they deny people needed care. A lot of people do not realize that if your employer has a self-insured plan, which many people have, and they fall under ERISA, which is a Federal law, that basically says that the HMO cannot be sued if it denies people care.

We repealed that, essentially, effectively, in the Democratic bill. The Republican bill, however, does nothing to hold HMOs accountable for their actions. It not only leaves ERISA essentially intact and still has the prohibition on suit, it actually exacerbates the problem, because its external appeals process, in other words, the ability to appeal the denial of care, only applies to people whose insurance comes under ERISA.

Individuals in the private insurance market are left without any external recourse when they are denied care, and what is even worse is that those who were fortunate enough to be covered by ERISA are subject to the HMOs' definition of ''medical necessity.''

I just wanted to talk a little about that, because it goes to the whole issue of enforcement. What the Republican bill does, it allows the HMOs, and not the doctors and patients, to define ''medical necessity.'' Of course, this provision flies in the face of the whole idea of the managed care reform debate, that ''medical necessity'' should be the determinant of whether or not a patient needs care, and not cost considerations.

So if we are really going to make reforms in HMOs and managed care, we have to make sure that doctors and patients decide what type of care is necessary, whether you have to stay a few extra days in the hospital, whether or not you need a certain procedure. But if the insurance company bureaucrats continue to make those medical decisions, people will continue to be denied care. That is what is going to happen with the Republican bill, because it lets the HMOs and not the doctors and patients define what is a ''medical necessity.''

I also want to dispel a myth that my Republican colleagues have been working overtime to spread. That is that the Democrats' Patients' Bill of Rights does not create any new Federal litigation.

□ 2200

In other words, if you repeal ERISA, as we do, all that allows is for individuals to go back to the States and bring the kinds of suit they would normally be able to bring. So we are not really creating a new Federal remedy by repealing ERISA and allowing people to sue. We are just allowing people to exercise the rights that they would normally have if the Federal Government had not prohibited them from bringing suit under ERISA.

Some of the other points that could be made with regard to enforcement of the Republican bill I do not think I need to go into tonight. I just want to stress again that if you have patient protections and you cannot enforce them, either through some external review process or through the ability to go to court and bring suit, then for all practical purposes, whatever patient protections you have under the Republican bill really are meaningless.

If I could, Mr. Speaker, the last thing that I wanted to bring up tonight is the whole issue of cost, because I know that my colleagues on the other side of the aisle continue to talk about how if we put in place the Democrats' Patients Bill of Rights, which is a comprehensive patient protection act, that somehow it is going to cost more and it is going to drive the cost of HMOs up. Nothing really could be further from the truth.

We had the Congressional Budget Office do an analysis, if you will, of the Democrats' Patients Bill of Rights. What they basically said is that the legislation would have a very minimal effect on premiums with most individuals paying only about $2 more per month. Keep in mind that for an extra $2, and it probably would not even be that much, you are going to get the return of medical decisionmaking to patients and health care professionals and not insurance company bureaucrats. You are going to get access to specialists, including access to pediatric specialists for children. You are going to get coverage for emergency room care. You are going to get the right to talk freely with doctors and nurses about every medical option. You have an appeals process and real legal accountability for insurance company decisions, and you have an end to financial incentives for doctors and nurses to limit the care that they can provide.

These are the kinds of patient protections that we are providing with the Democratic bill. I know that when I talk to most Americans, and certainly, or most of my constituents, and certainly the polls have shown both Democratic and Republican polls, that when you talk to most Americans, they would rather have those protections. They would like to be able to go to the emergency room nearby and not have to worry that they are not going to be approved because they did not get a referral or that they have to go to an emergency room 50 miles away. They do not want the doctor to be gagged as some doctors are now with HMOs and told they cannot even tell you about certain medical options.

They do not want doctors and nurses to be under a regime where if they do not meet assert quota, if they do not deny a certain number of cases or a certain number of procedures, that they will not get paid enough for their work. We know that the average American would not mind paying an extra dollar or two per month to have the kind of protections that we are talking about here tonight.

Mr. Speaker, I would just say, in conclusion, that, of course, the Republican bill passed the House of Representatives a couple weeks ago but very narrowly. The Democratic proposal, the difference between the two was only about 5 votes. I think that shows very strong support in this body for strong patient protections that are enforceable. I only hope that when the legislation goes over to the Senate and that when the Senate reconvenes in September, the Senate will take up the stronger Democratic bill and that we will see a strong bill pass this Congress, pass both houses of this Congress, because President Clinton has said over and over again that if he gets the Republican version on his desk, he will veto it because it essentially does not provide the type of patient protections that we need to really have some significant managed care reform.

If it is necessary for the legislation to come back to the House or back to the Senate after the President's veto, we know that we are going to have the support here to pass a strong bill because of the vote that took place on the floor of the House of Representatives two weeks ago.

I see one of my colleagues is here who has been a strong supporter of the

Democrats' Patients Bill of Rights, who is a member of the Committee on Commerce, the gentleman from Texas (Mr. GREEN), where they have on the State level passed very strong patient protections, but one of the things that we know, because New Jersey, my State, is another State that has passed State legislation that provides strong patient protections, but unfortunately many people are not covered by State law because, again, of the ERISA statute that I mentioned previously. ERISA, which applies to all employers that essentially self-insure, that is a big group in this country, ERISA essentially preempts State law. So that is the reason why, one of the reasons why we have to pass Federal legislation for even those States that do have strong patient protections to make sure that everybody is covered. Of course, also to take care of the States that have not passed strong patient protection legislation. That is why we need comprehensive Federal legislation.

I yield to the gentleman from Texas (Mr. GREEN).

Mr. GREEN. I thank my colleague from New Jersey for allowing for this special order this evening and asking for the time, and I thank the gentleman for yielding to me.

I want to make a few points, because I think the gentleman led into the concerns I had with the bill that we passed, literally, on the Friday of the tragedy that occurred here in the Capitol, make a few points about the Republican majority bill, a bill that we talked about, the Democratic plan actually had bipartisan support. The Republican bill would do to state passed, State protections like Texas has done, and share with you some of the concerns that have been raised by officials in my home State.

Very simply, it would destroy some of the local initiatives that we have seen in the State of Texas. I do not know if that is true in New Jersey or other parts of the country, but the Republicans so-called Patient Protection Act would really be called the Patient Protection Elimination Act.

First, let me refer to a letter from our State comptroller, John Sharp. He writes, literally on July 29, after the bill was passed, The following question should be asked of anyone considering supporting this bill, the HMO reform conference committee report. Will the Federal legislation preempt Texas's current managed care protection laws? Will Federal legislation preempt Texas' HMO Legal Accountability Act? Is there a Federal floor that States may improve upon, or will new Federal legislation create a ceiling and preempt Texas from enacting tougher patient protection laws?

For example, would the Federal legislation erase the Texas gag clause legislation as well as the gag clause legislation in other States and provide a weaker substitute nationwide? Does the Federal legislation preempt Texas OB/GYN direct access bill and substitute weaker language that permits direct access for routine care? Will the Federal legislation be the final word on managed care accountability, or will Texas and other States experiment with different kinds of approaches such as their own external review process?

Because, again, this is quoting from John Sharp, Comptroller of Public Accounts, I will put it into the RECORD. I am reading from the verbiage because the Gingrich supported HMO reform legislation is silent on many more kinds of patient protections enacted into Texas. Are those protections also preempted or nullified by this legislation?

Will this proposed bill erase Texas laws protecting patients and doctors from retaliation by a plan or due process provisions for health care providers or continuity of care that guarantees after a provider has been deselected?

These are just a few of the questions that Comptroller John Sharp raised. We just received this letter today. It was dated at the end of last week and, again, because of the tragedies that we saw here happen that Friday afternoon, I do not think a lot of Members have thought about what Congress did pass that day.

Let me talk about a letter from a person who I served with when I was a State representative and a State Senator. John Smithee is a Republican State representative from North Texas, Armstrong, Deaf Smith, Oldham and Randall Counties which is very far north in Texas.

He writes, again on the 22nd of July, We are writing to respectfully urge, and he is writing not only himself but also David Sibley, chairman of the Senate Committee on Economic Development for the State of Texas, and John Smithee is the chairman of the House Insurance Committee and, by the way, both these members in the legislature in Texas are Republican members.

And they write, we are writing to respectfully urge that in the course of your deliberations on managed care and patients rights, you do not disturb the substantial progress already achieved in Texas. As chairman of the committees of jurisdiction over insurance and managed care in Texas, we have presided over hundreds of hours of public hearings on every conceivable aspect of managed care. I doubt there is an argument or threat that we have not heard in the course of the legislative lobbying, advertising or debate. The 75th legislature, the one this 1997, both Representative Smithee and Senator Sibley cosponsored the legislation and, along with many other colleagues in their House and Senate, some of the most comprehensive and sweeping managed care reforms in the country. They have not had the opportunity to review fully the Federal managed care legislation that was selected, scheduled for debate in the House, but judging from the news reports and their own preliminary analysis it appears that the deliberations are following an identical pattern as the debate in Texas, especially regarding medical liability.

While we intend to provide a more detailed analysis of the impact as it proceeds to conference, we respectfully submit the following observations.

HMO accountability. The Texas legislature, in 1997, in a strong bipartisan display established a legal duty on the part of managed care organizations to exercise ordinary care when determining medical necessity. Aetna Insurance filed suit against the State of Texas claiming that the Senate bill was preempted by Federal ERISA. Ideally, Federal legislation should clarify ERISA does not preempt a State's right to determine health plan accountability and quality.

If such clarification is not achievable, we suggest that the Texas congressional delegation push for Texas as a designated national pilot project for 3 years so the experiences can be measured and evaluated by future Congresses. We know what happened on that Friday and we know that there are cases where the experiments and the innovative techniques that a lot of our States are using, particularly Texas, will not stand the muster of the bill that passed this House.

Also they ask for an independent review in item 2. It is our understanding that H.R. 4250, the House GOP bill, would weaken Texas independent review provisions. Again, these are a Republican State Senator and a Republican member of the State legislature, State House. Apparently H.R. 4250's independent review is not binding compared to Texas law that requires managed care organizations to provide the care deemed appropriate by the independent review organization. Once again, the Texas legislature's preference in this regard was overwhelmingly stated in 1997.

Number 3, this is the last one of Representative Smithee and Senator Sibley's letter. We are also concerned that H.R. 4250 weakens current Texas law regarding emergency care and gag clauses. As we understand it, the bill waters down Texas prudent layperson by allowing a health plan to override the treatment decision by the emergency department physician. The gag clause provision does not protect health care providers from retaliation when they act as advocates for their patients.

They end it by saying, we know you are hearing from many points of view on managed care. Thank you for considering our comments on Texas law. And that copy was sent to Governor Bush and also to the whole Texas delegation.

My concern and a lot of Members' concern is what the House passed as HMO is a sham. What it is actually doing is taking a step backwards from States who have made efforts to try and control it in their own States, like Texas has and I think New Jersey has and other States. So what we are doing

is taking away States' rights. It is ironic that as a Democratic member that I am concerned about Congress taking away States' rights, but that is what happened, I think, in H.R. 4250. And I am really surprised that some of my Republican colleagues would allow that to happen here on the floor when so often we talk about the importance of states being the experimental, the embryo, the way to say, okay, we have a problem with HMOs, we have a problem with education. Let us see what the States are doing.

We have 50 laboratories out there. Yet in Congress, in H.R. 4250, we are deciding what is best for the State of Texas and New Jersey, even though those legislators made some tough decisions, as Representative Smithee pointed out and Senator Sibley pointed out. They made some tough decisions and went forward with it.

While many Republicans here in Washington keep saying real reform is too expensive and would be too great a burden on insurance companies, it is important to note that similar provisions in Texas raised premiums only 34 cents per month per member. I would not mind going to any constituent in my district and saying, for 34 cents, would you like to have your doctor have the ability to talk to you about your health care needs, even though your HMO may not cover it so we can eliminate the gag clause? Would you really like to have a swift and sure external and internal appeals process for 34 cents a month, 34 cents a month? Would you really rather not have the decision made by you if you go to an emergency room?

□ 2215

If someone has chest pains and they go to that emergency room and the doctor says, well, I am sorry, those chest pains were really gas. And the doctor asks what they had for dinner, and they probably had some good Mexican food that we have in Texas, and that probably caused them to have gas. But that person could have been having a heart attack. But for 34 cents people would be willing to pay to make that determination themselves with that doctor in that emergency room.

That is why I think we need to continue to call the American people's attention to what happened on that Friday here on the floor of this House. The tragedy that happened outside these doors we all pray about and we support those families, but I am concerned that what happened on the floor of this House that Friday, with the passage of that bill, will not only not help Americans but it will set back the States who have made progressive efforts to try and provide that ability to their patients and to their providers and their physicians: The right to sue an HMO if they are inappropriately denied care; to have access to a binding independent review; to communicate freely with the provider without fear of retaliation against the doctor; and utilize emergency room services if an individual experience symptoms that a prudent layperson would consider an emergency.

And again, what does it cost? Thirty-four cents per patient per month. We hear all sorts of huge costs. In fact, I heard from this mike that day people saying how our bill does not cost anything. I heard it time and time again. It doesn't cost anything because it takes away rights. No wonder it does not cost anything. It takes away rights. We do not get something for nothing, but for 34 cents under Texas law they are providing those protections.

And I would hope that we would see our way clear that when this bill goes to the Senate they would reform H.R. 4250, and maybe the conference could even make some changes with the encouragement and working with the administration. But I would hope when we get another vote on that bill in a conference committee report that it will be a much better product for our constituents than what we sent out here that Friday that all of us regret the tragedy that happened that day.

And, again, I want to thank my colleague from New Jersey. I cannot say it enough; that for the small cost that we are seeing in Texas for these rights, why we cannot on this floor of the House do as well as the State legislature in the State of Texas, why we cannot do as well as the legislature in New Jersey and as well as many of the State legislatures all over this country, because, as my colleague pointed out, they only affect insurance companies that are licensed by the State of Texas. They do not affect employers in my district who are multi-State employers who have to come under Federal law because there is a plan in Houston and a plan in New Jersey. They do not want to have to comply with two laws.

So we need to provide those protections, and I again thank the gentleman for allowing me to be here tonight and to speak.

Mr. Speaker, I provide for the RECORD the letters from both John Sharp and John Smithee and David Sibley. I read most of them into the RECORD, anyway.

THE STATE OF TEXAS,
HOUSE OF REPRESENTATIVES,
Austin, TX, July 22, 1998.

Hon. GENE GREEN,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE GREEN: We are writing to respectfully urge that, in the course of your deliberations on managed care and patients' rights, you not disturb the substantial progress already achieved in Texas.

As chairmen of the committees that have jurisdiction over insurance and managed care in Texas, we have presided over hundreds of hours of public hearings on every conceivable aspect of managed care. I doubt there is an argument or threat we haven't heard in the course of legislative lobbying, advertising, or debate. In the 75th Legislature, we authored, along with many of our colleagues, some of the most comprehensive and sweeping managed care reforms in the country.

We have not had an opportunity to fully review the federal managed care legislation that is scheduled for debate in both chambers of Congress this week. But judging from news accounts and our own preliminary analysis, it appears that the deliberations are following an identical pattern as the debate in Texas, especially regarding managed care liability. While we intend to provide a more detailed analysis of the impact of the congressional legislation as the bills proceed to a conference committee, we respectfully submit the following observations at this time.

1. HMO ACCOUNTABILITY

As you know, the 1997 Texas Legislature, in a strong bipartisan display, enacted S.B. 386, which establishes a legal duty on the part of a managed care organization to exercise ordinary care when determining medical necessity. Aetna has filed suit against the State of Texas claiming that S.B. 386 is preempted by federal ERISA. Ideally, federal legislation should clarify that ERISA does not preempt a states right to determine health plan accountability and quality. If such clarification is not achievable, we suggest that the Texas Congressional Delegation push for Texas to be designated as a national ''pilot project'' for three years so that the experience can be measured and evaluated by a future Congress. We would respectfully urge you to oppose any language that would jeopardize, weaken, or preempt Texas' S.B. 386.

The extravagant claims about increased litigation and costs are simply not true. In 1995 managed care reform opponents called the patient protection act a billion-dollar health care tax, and 1997 they claimed health care costs would skyrocket upwards of 30 percent. However, multiple independent studies, including an actuarial analysis by Milliman and Robertson, of Scott and White's HMO, show costs have increased by about 34 cents per member per month.

2. INDEPENDENT REVIEW

It is our understanding that HR 4250, the House GOP bill, would weaken Texas' independent review provisions. Apparently, HR 4250's independent review is not binding compared to the Texas law that requires managed care organizations to provide the care deemed appropriate by the independent review organization. Once again, the Texas Legislature's preference in this regard was overwhelmingly stated in 1997.

3. EMERGENCY CARE/GAG CLAUSES

We also are concerned that HR 4250 weakens current Texas law regarding emergency care and gag clauses. As we understand it, the bill waters down Texas' prudent lay person by allowing a health plan to override the treatment decision by the emergency department physician. The gag clause provision does not protect health care providers from retaliation when they act as advocates for their patients.

We know that you are hearing many points of view on managed care reform. Thank you for considering our comments on the potential impact of federal legislation on Texas law. As the legislation proceeds to conference committee, we will share additional comments with you. In the meantime, please call on us if we can be of assistance.

Sincerely,

DAVID SIBLEY,
Chairman, Senate Committee on Economic Development.
JOHN SMITHEE,
Chairman, House Committee on Insurance.

OFFICE OF THE COMPTROLLER,
Austin, TX, July 29, 1998.

Hon. GENE GREEN,
House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR GENE: As State Comptroller, I am disturbed by the special interests in Washington and their attempts to preempt and weaken Texas' HMO patient protection laws.

You will recall that last year a bi-partisan effort in the Texas Legislature succeeded in passing the nation's toughest patient protection laws, including a new statute holding HMOs legally accountable for wrongfully delaying or denying necessary medical are.

Now it appears that House Speaker Newt Gingrich is trying to help special interest groups in Washington preempt Texas law and dilute our new patient protection laws.

As this issue moves into conference committee, I urge you to support quality patient care in Texas rather than federal legislation that preempts Texas laws protecting HMO patient care.

I also urge you to guard against falling prey to the false arguments against holding HMOs legally accountable for the wrongful denial of necessary medical care. As State Senator David Sibley emphasized in a recent opinion column (Dallas Morning News, 7/25/98), Texas' new HMO liability law has not flooded the courthouse with new lawsuits, but instead has ''actually diverted lawsuits and saved patients' legal costs'' (see enclosure). As the state's chief financial officer, I affirm Senator Sibley's observation.

The following questions should be asked by anyone considering support for the HMO reform conference committee report:

1. Will federal legislation preempt Texas' current managed care patient protection laws?

2. Will federal legislation preempts Texas' HMO legal accountability law?

3. Is there a federal floor that states may improve upon, or will new federal legislation create a ceiling and preempt Texas' tougher patient protection laws?

For example, will the federal legislation erase Texas' gag clause legislation, as well as gag clause legislation in many other states, and substitute weaker provisions?

4. Does the federal legislation preempt Texas' Ob/Gyn Direct-Access Bill and substitute weaker language that only permits direct access for ''routine'' care?

5. Will the federal legislation be the final word on managed care accountability, or will Texas and other states experiment with different kinds of approaches such as their own external review process?

6. Because the Gingrich-supported HMO reform legislation is silent on many more kinds of patient protections enacted in Texas, are those projections also preempted or nullified by this legislation? Will this proposal bill erase Texas laws protecting patients and doctors from retaliation by a plan, or due process provisions for health care providers, or continuity-of-care guarantees after a provider has been deselected?

These only raise further questions about this proposed federal legislation. I encourage you in the strongest possible terms to defeat this bill on the grounds that it seeks to take away Texas' HMO patient protection. As always, if I can provide further information and help in any way, please do not hesitate to let me know.

Sincerely,

JOHN SHARP,
Comptroller of Public Accounts.

Mr. PALLONE. Mr. Speaker, I want to thank my colleague from Texas because he brought out a number of very important points, and when he mentioned the minimal cost, the 34 cents per month, I am always happy to mention the CBO saying that our Democratic plan would only be maybe as much as $2 a month.

But I agree with the gentleman, I think it would even be less than that. And the reason there would be no additional cost is, essentially, these patient protections are things that make sense. They are common sense proposals. And if an insurance company knows, if an HMO knows that they have to provide these protections, they get involved in prevention and they do not let terrible things happen. They do not deny care that should be provided. So that avoids the extra cost that might come from a lawsuit or damages or whatever because an HMO is not doing what they are supposed to do.

So I think what we are really talking about are basic common sense ideas and principles that can be easily provided for if the HMO is told that they have to do it, and that is why it really does not cost any more.

The other thing I wanted to mention that the gentleman brought out was with regard to the preemption, which I think is so important. And, yes, the same thing would be true in my home State of New Jersey. We have very strong patient protections now on the books, similar to what the Democrats have proposed with our Patients' Bill of Rights. And it is quite clear when we look at the Republican bill that it would preempt many of those very strong provisions in New Jersey, just as in the State of Texas.

The reason for all this is that, as we talked before, this bill was essentially drafted and put together by the Republican leadership in 1 week because they wanted to have a response to the fact that so many people around the country are clamoring for managed care reform. There are so many loopholes, so many problems, so many exceptions in this bill. Whether because of poor drafting or intentionally because it is basically the insurance companies that are writing it, essentially we are taking a step backward. The Republican leadership would take us a step backward with this legislation.

I know the gentleman mentioned a couple of things, and I wanted to use them as examples, the kinds of loopholes that we have. The gentleman talked about the gag rule, where doctors are told by an HMO that they cannot talk about procedures or other means of doing things that the HMO will not cover. That is the gag rule, as we talk about it.

Well, because of the complaints that the Democrats made, there were some changes made in the Republican bill so that there were some gag rule protections or some prohibitions on the gag rule. But when we looked at the fine print, we found that it only applied to doctors who were directly contracting with the HMO. But many physicians operate through group practices and they are not covered by it, so they still can impose a gag rule on those physicians.

The gentleman mentioned the emergency room care. Well, again, that prudent layperson standard that we have in the Democratic bill says if I get severe chest pains and there is a hospital a mile away, I go to that hospital. I do not call for approval, and I do not go to the hospital 50 miles away that the HMO may say I am supposed to go to. Because the average person, prudent layperson, would not go 50 miles and call to get approval to go to a hospital when they have chest pains.

Well, the Republican bill says the HMO can define medical necessity. So they could basically define a prudent layperson any way they want. And one of the things in the Democratic bill is that that includes severe pain. So if I have severe pain, I go to the local emergency room. But the Republicans do not provide for that, so they can define emergency care as not allowing for severe pain. Just an example.

I do not want to keep mentioning all these examples, but it is just riddled with all these loopholes. And it is not really funny, I should not be laughing, but it is pretty sad because, in many cases, what it does is to preempt many good State laws and substitute very vague language that really does not provide any protection.

I am glad that the gentleman brought that out this evening because I think it is very important. I appreciate it.

Mr. GREEN. Again, I would like to thank the gentleman for this special order, and I do not think it is too strong a language to say that this bill that we passed, H.R. 4250, will not only not provide improvements, but it will set us back in patient responsibility, patient ability to be able to control their own destiny, physicians and providers being able to treat their patients, and that is what is so bad. I would hope that the American people will see what is happening, and I think they will after not only special orders like these, but also when we are back in our own districts.

I have town meet hall meetings in August and I expect to explain to my constituents on how it works and what happened and how it is such a travesty that the State of Texas passed a law in 1997, it was actually passed in 1995, but it was vetoed by the governor then, and in 1997 it became law without his signature, and yet we are taking away that local legislature's ability to solve their problems locally.

Again, 34 cents. Let me talk about the GAO report that talked about $2. I know that was an amount I used in the example for the price of a Big Mac, maybe a Supersized Big Mac now, that we could get these protections. Yet in Texas it is 34 cents. Thirty-four cents a month. So we are going to see cost estimates all over the board because it is hard to decide it. But, actually, in the State of Texas, the protections have been in effect and it costs 34 cents.

Mr. PALLONE. The amazing thing that my colleague brings out about the

preemption is usually, for most protections or legislation that is of a protective nature for health or safety on a Federal level, the Federal law reads that if the State wants to be more protective of the health or the safety or the environment, or whatever it happens to be, that they can do so. It is amazing that this bill does the opposite.

This Republican bill says that if we are more protective of the patient's health, then we are going to preempt that and the Federal law is going to hold. Usually we do the opposite, as the gentleman knows. So, again, there is clearly an effort here to do what the insurance companies want rather than do what not only is right, the right thing for the average person, but also what the norm is here when we deal with health and safety and environmental and other protections of that nature. So we know there is sort of a cynical side to this Republican bill in terms of what they are trying do.

The gentleman mentioned another thing that I think is important, and I have talked all evening about the Patients' Bill of Rights being a Democratic bill. But the fact of the matter is there are Republicans who not only cosponsored the bill but voted for the bill on the floor of the House and voted against the Republican bill. What the Republican bill is is a Republican leadership bill. There are Republicans who would join us in a bipartisan fashion, which is another indication of why the Patients' Bill of Rights really is a good bill. It is bipartisan. But, unfortunately, the Republican leadership is opposed to it.

I want to thank the gentleman again.

24TH ANNIVERSARY OF TURKEY'S INVASION OF CYPRUS

The SPEAKER pro tempore (Mr. PETERSON of Pennsylvania). Under the Speaker's announced policy of January 7, 1997, the gentleman from Florida (Mr. BILIRAKIS) is recognized for 60 minutes as the designee of the majority leader.

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of this special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I rise today to acknowledge the 24th anniversary of Turkey's brutal invasion and illegal occupation of the Island of Cyprus. Five Americans lost their lives in the invasion and the illegal occupation continues today.

Turkey continues to illegally occupy more than one-third of Cyprus with 40,000 troops. The current status quo is unacceptable. It is also unacceptable that the United States and the international community, while publicly denouncing the invasion and occupation, allow it to continue. The resulting instability between Greece and Turkey threatens the strength of NATO and could ignite into military conflict. It is time to demand, I repeat, demand a solution in Cyprus.

I am hopeful that a solution to the division of a Cyprus is within reach. However, my optimism is tempered by the fact that I held my first Cyprus special order on the ninth anniversary of the invasion in 1983. Although much has changed since then, many issues remain the same.

In July 1974, Turkish forces, consisting of 6,000 troops and 40 tanks, landed on Cyprus's northern coast and captured almost 40 percent of the island nation.

I might add parenthetically that those 40 tanks were either American made tanks or certainly American made parts which went into them.

Cyprus, which is roughly the size of Connecticut, has not been whole since the invasion. Churches have been plundered and ransacked, beautiful frescoes have been stripped off the walls of religious institutions. Some churches have been converted into mosques, while still others were turned into cinemas and recreation centers. The Cypriots have witnessed the intentional destruction of their cultural heritage over the past 24 years.

Cyprus is an island divided by the green line, a 113-mile physical barrier which separates Greek Cypriots from the towns and communities where their families lived for generations. The division of Cyprus is most obvious in its divided capital city of Nicosia. It is the last truly divided city in the world. Armed guards stare at each other at check points around the city. In the center of the city bullet holes scar buildings and serve as a powerful reminder of the 1974 events.

More than 200,000 men, women, and children were forcibly expelled from the northern portion of Cyprus during the invasion and occupation. They remain refugees today. A people without a home. There are still 1,614 people missing from the invasion.

Mr. Speaker, I would yield to the gentleman from New Jersey (Mr. PAPPAS) at this point.

□ 2230

Mr. PAPPAS. Mr. Speaker, I thank my friend, the gentleman from Florida, for yielding and for his leadership, not just tonight but for so many years, and not just in special orders marking the very unfortunate moment in human history but for his leadership day in and day out on this issue and so many others.

Mr. Speaker, I rise today along with my friend, the gentleman from Florida (Mr. BILIRAKIS) to call attention to an injustice that is 24 years too old. On July 20, 1974, 6,000 Turkish troops and 40 tanks landed on the north coast of Cyprus, capturing nearly 40 percent of the island. Overnight, nearly 200,000 Greek Cypriotes became refugees, refugees in their own country.

Today, in defiance of United Nations resolutions, nearly 35,000 Turkish troops occupy the northern part of this island nation. The refugees that fled 24 years ago still cannot return to their homes. Sadly, over 1,600 people are still missing, including several Americans. A barbed wire fence known as the Green Line, which many of us have seen, cuts across the island separating communities and people that lived for generations together in peace.

Aside from all of this, numerous human rights abuses are still taking place. Every year, Congress addresses this problem, denouncing the unlawful and tyrannical rule that Turkey has imposed on Cyprus. It is important that we continue to acknowledge the injustice of Turkey's actions.

While this issue lacks the glamour that attracts mainstream media coverage, it does not make this issue any less important.

Problems from this conflict reach beyond the island. Mistrust and animosity have grown between our NATO partners Greece and Turkey. Now more than ever action must be taken. The United States, the European Union, NATO and the United Nations must do more now.

I remind my colleagues, though, that this problem began with a violent invasion, yes, a violent invasion, of Cyprus by Turkey, and that lasting peace and justice can only be restored when Turkish troops are fully removed.

I hope and I pray, as I know many of us do here in this country, that the vision of a peaceful resolution on Cyprus is not lost. I urge this administration to be more active in seeking the peaceful resolution that is so desperately needed. A continuance of U.N. sponsored confidence-building measures can also help bring about peace.

What will not bring peace, however, is complacency. Let us not stand by for another year, let us not allow ourselves to overlook this issue any longer. As long as the conflict continues, so will pain and human suffering.

Next year, Congress will commemorate the 25th anniversary of these sad circumstances. I pray that we stand here and tell of progress rather than oppression and resolution rather than conflict.

Mr. BILIRAKIS. Mr. Speaker, I thank the gentleman from New Jersey for his contribution to this special order and his work. In the short period of time he has been here, he has become a true leader on this subject.

In 1992, Mr. Speaker, I chaired hearings of the Congressional Human Rights Caucus and heard heart-wrenching stories of people who had relatives abducted during and after the invasion. As a result of legislation that I cosponsored, our government recently discovered the remains of one of the missing, a young American named Andrew Kasapis.